No. 82-2014

In the Supreme Court of the United States

OCTOBER TERM, 1983

SOUTH PARK INDEPENDENT SCHOOL DISTRICT, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the district court abused its discretion in ordering petitioner school district to implement a desegregation plan devised by the court after petitioner and the other parties had failed to propose a satisfactory desegregation plan.

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OPINIONS BELOW

The district court's opinion of August 5, 1981 (Pet. App. B1-B20), order of December 10, 1981 (App. A, *infra*, 1a-4a), and findings of fact and conclusions of law of December 15, 1981 (App. B, *infra*, 5a-8a) are unreported. The opinion of the court of appeals of March 1, 1983 (Pet. App. A1-A2) is reported at 699 F.2d 1291.

Earlier district court opinions of August 31, 1970 and September 9, 1976 are unreported. An earlier district court opinion of June 1, 1980 (Pet. App. C1-C21) is reported at 491 F. Supp. 1177. Earlier court of appeals opinions of January 23, 1978 and May 28, 1981 (Pet. App. D1-D10) are reported at 566 F.2d 1221 and 647 F.2d 504, respectively.

JURISDICTION

The judgment of the court of appeals was entered on March 1, 1983. The petition for a writ of certiorari was filed as of May 31, 1983, on June 10, 1983. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

The United States filed this action against the South Park Independent School District ("SPISD") in 1970. Until the late 1950's, SPISD operated a dual school system pursuant to Texas law (566 F.2d 1221, 1223 n.2 (1978)). When this action was filed, a "freedom of choice" system for student assignment was in effect (Pet. 2).

On August 31, 1970, the district court ordered the implementation of a school integration plan designed to establish a unitary school system. No appeal was taken.

On July 19, 1976, the United States filed a motion for supplemental relief, alleging that the plan implemented pursuant to the 1970 order had not disestablished the dual system under the standards articulated by this Court in *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971). On September 9, 1976, the district court denied relief, holding that its order of August 31, 1970 desegregated SPISD and thus dissolved all vestiges of a dual school system, and that SPISD had fully complied with the August 31, 1970 order. The court found that shifting residential patterns, private school attendance by some district students, and other factors beyond SPISD's control, explained the fact that the results of the 1970 order with respect to desegregation were not what was anticipated in 1970.[1]

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[1]The court also held that the United States had failed to comply with the requirements of 20 U.S.C. 1758, which provides:

> Notwithstanding any other law or provision of law, no court or officer of the United States shall enter, as a remedy for a denial of equal educational opportunity or a denial of equal protection of the laws, any order for enforcement of a plan of desegregation or modification of a court-approved plan, until such time as the local educational agency to be affected by such order has been provided notice of the details of the violation and given a reasonable opportunity to develop a voluntary remedial plan. Such time shall permit the local educational agency sufficient opportunity for community participation in the development of a remedial plan,

The court of appeals reversed on the ground that the district court's conclusion that SPISD was a unitary system was not detailed enough to show whether the predominantly one-race schools in the district resulted from present or past discriminatory actions by SPISD (566 F.2d at 1225). The court emphasized that, prior to the 1976 order, no judicial finding had been made that SPISD had ever become a unitary system (*ibid.*).[2] The case was remanded "in order to determine whether or not the SPISD is in fact a 'unitary' school system" (*ibid.*). The district court was directed to scrutinize the one-race schools in SPISD under the analysis prescribed in *Swann, supra*. Petitions for writs of certiorari filed by SPISD and intervenors were denied with two Justices dissenting (439 U.S. 1007 (1978)).

On remand, the district court again held that its 1970 order had "created a unitary system for the SPISD" (Pet. App. C2); that it had not explicitly retained jurisdiction of the case and thus could not grant supplemental relief absent proof of subsequent constitutional violations (*id.* at C10-C13); and that SPISD had neither violated the 1970 remedial order (*id.* at C14-C16) nor taken any action subsequent to that order which would have, "as a natural and foreseeable consequence, a segregative effect" (*id.* at C12).

The court of appeals once again reversed, holding that the district court had retained jurisdiction of the case (Pet. App. D9), and that the district court's finding that SPISD had automatically become a unitary system upon the implementation of the August 1970 plan was clearly erroneous "because in fact the school system remains a dual one" (*id.* at D8). Based on evidence presented to the district

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[2]The court also held that 20 U.S.C. 1758 (see page 2 note 1, *supra*) was inapplicable because the case had never been closed, but that the United States had in any event complied with the statute's notice requirements (566 F.2d at 1225-1226).

court at hearings in 1976 and 1979, the court of appeals concluded that SPISD's dual system had not been dismantled by the 1970 order and that SPISD had "failed to eliminate the continuing system wide effects of the prior discriminatory dual school system" (*id.* at D7).[3] The case was remanded to the district court to develop, with the assistance of the parties, a new school desegregation plan to be implemented for the 1981-1982 school year (*id.* at D9). SPISD's and intervenors' applications for a stay pending disposition of their petitions for writs of certiorari were denied by Justice Powell (*id.* at E1-E4), and the petitions were subsequently denied (454 U.S. 1143 (1982)).

On remand, the case was reassigned to another district judge, who conducted evidentiary hearings and received proposed desegregation plans from the various parties. In an opinion dated August 5, 1981 (Pet. App. B1-B20), the court rejected the proposed plans and adopted a plan of its own. The court determined that the various pairing and clustering plans presented to it were unsatisfactory because they would encourage white flight by creating "safe havens" in some zones,[4] and because they would require students to change schools with a frequency that was educationally undesirable (*id.* at B9-B10). The court further determined that the magnet school concept would not work because of the relatively small size of the school district and the lack of a strong commitment to the concept by the school board

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[3]The court of appeals also ruled that its earlier judgment relating to 20 U.S.C. 1758 (see pages 2-3 notes 1-2, *supra*) was the law of the case (Pet. App. D3), the district court having reiterated on remand that that statute deprived it of jurisdiction (*id.* at C16).

[4]The court found that prior court orders designed to provide a unitary system proved unsuccessful because many white families simply moved to areas of the school district that were unaffected by the orders, and that any plan providing such "safe havens" would be "doomed to fail" (Pet. App. B5-B6).

(*id.* at B10), and that a "freedom of choice" plan would "delay rather than promote conversion to [a] unitary, nonracial, non-discriminatory system[]" (*id.* at B7).

The district court interpreted the court of appeals' mandate as requiring it "to develop *and* implement a constitutional desegregation plan to be in place and in operation for the 1981-82 school year" (Pet. App. B2), and devised and adopted its own plan for SPISD (*id.* at B13-B20). The court's plan assigned each household family in the school district on a random basis to one of two feeder patterns for grades 4-12,[5] but preserved the neighborhood pattern for grades K-3 (*id.* at B13).[6] The feeder patterns for grades 4-8 were to go into effect for the 1981-1982 school year, while the feeder patterns for grades 9-12 were to go into effect for the 1982-1983 school year (*id.* at B17).

The court recognized that the exclusion of grades K-3 from its remedial order would leave some one-race schools, but observed that "[n]ot every school in a school district must have any particular racial ratio in order for the school district to pass constitutional muster" (Pet. App. B15). The court noted that its plan had two major advantages over the proposals submitted by the parties: (1) the court's plan "minimizes to the extent possible the number of times a student must change schools" (*id.* at B13), and on the whole has minimal disruptive impact (*id.* at B18-B19); and (2) under the court's plan, "all families in the school district will

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[5]The court envisioned the use of a random selection process "such as the drawing of colored beads from a jury wheel" (Pet. App. B16).

[6]The neighborhood school pattern is retained for students in grades K-5 in three elementary schools that were already desegregated at the time of the hearing (Pet. App. B13-B14). The court subsequently determined that one middle school and one high school (not one of the two involved in the feeder patterns) also were "naturally integrated" and should continue to operate as neighborhood schools (App. A, *infra*, 2a).

share equally in the burdens as well as the benefits of the remedial plan, by participating in the random selection process on equal terms," with "no exceptions for any family" and "no 'safe havens' within the district" (*id.* at B17).

The court deferred ruling on the particulars of the high school portion of the feeder pattern until a hearing, to be held in December 1981, at which time the school district was to report whether it planned to build a new high school or renovate one of two existing high schools (Pet. App. B20). The court also stated that it would entertain motions to modify the plan at that hearing (*ibid.*). After the December 1981 hearing, the court granted, with some modifications, SPISD's motion for a single high school plan; refused to defer implementation of the high school plan for two years; and disposed of other pending motions (App. A, *infra*, 1a-4a). On December 15, 1981, the court issued findings of fact and conclusions of law (App. B, *infra*, 5a-8a). The court held that SPISD "still contains vestiges of a dual school system"; that the court's desegregation plan, "if implemented as expected, should completely desegregate the [SPISD], creating a unitary school system"; and that the plan "is a valid exercise of the Court's broad equitable powers to remedy the present effects of the prior discriminatory school system, in a manner calculated to minimize disruption" (*id.* at 7a). The court entered judgment based on its December 15, 1981 findings and conclusions and on its August 5, 1981 opinion adopting the desegregation plan.

On appeal, the court of appeals affirmed the judgment of the district court, stating (Pet. App. A2):

> Our mandate in [the 1981 appeal in this case] was as clear as words can make it: the district court was instructed to dismantle the existing dual school system at once.

Turning to the district court's rejection of the plans submitted by the parties, the court of appeals observed (Pet. App. A2):

> The district judge['s] [findings] that the plans offered by the parties would not meet constitutional muster * * * are not challenged as clearly erroneous and, indeed, on the record they could not be.

The court then affirmed the district court's own plan, holding that adoption of the plan was an attempt to satisfy the earlier mandate "in a way that is clearly constitutionally permissible" (Pet. App. A2).[7]

ARGUMENT

1. Petitioner states that the question presented here is "[w]hether the Court of Appeals erred in holding that a district court-ordered student assignment plan requiring 'perfect racial balance' is constitutionally permissible" (Pet. 2). But that question is not presented by this case: the district court's desegregation plan for SPISD does not require "exact racial balance in each school" (Pet. 14).

The district court's plan provides for student assignments to be made by a random selection process. Although this should ensure a racially mixed student population at each school affected by the plan, and will probably yield a racial distribution at each such school approximating that of the total student population, there is no assurance of any particular racial distribution in any given school.[8] Moreover,

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[7]The court of appeals noted (Pet. App. A2) that:

> While portions of the district judge's opinion read in isolation might indicate that he misinterpreted constitutional requirements, the opinion read as a whole shows that he understood and fairly applied the constitutional precepts applicable to school desegregation cases.

[8]Because there is no reporting requirement in the court's plan, the record does not include the actual results of the random selection

these random assignment procedures do not, under the district court's plan, apply to schools for grades K-3 (see page 5, *supra*). The court recognized that some of these neighborhood schools would therefore remain one-race schools, but indicated that "[n]ot every school in a school district must have any particular racial ratio in order for the school district to pass constitutional muster" (Pet. App. B15). In addition, three elementary schools serving grades K-5, one middle school, and one high school are exempted from the court's random selection procedures and continue to operate as neighborhood schools under the desegregation plan (see page 5 note 6, *supra*). These schools, although "naturally integrated" (App. A, *infra*, 2a), are not in "perfect racial balance" (Pet. 2).

The district court required only a "satisfactory system-wide racial mix" (Pet. App. B2), not "exact racial balance in each school" (Pet. 14). Thus, petitioner's statement of the question presented does not reflect any issue properly before this Court.

2. Petitioner contends that the district court "misapprehended the mandate of the court of appeals" as requiring the district court to implement a plan "produc[ing] an exact racial configuration in each district school" without first determining that present disparities are the result of discriminatory action by the school district or the State of Texas (Pet. 12). In effect, this argument is that SPISD should have been given yet another opportunity to relitigate the question of its liability for the remaining segregation of its schools—a question that this Court has previously declined to review.[9]

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[9]Major portions of the petition in this case are virtually identical to the petition filed in *South Park Independent School District* v. *United States*, cert. denied, 454 U.S. 1143 (1982).

SPISD has had the opportunity to litigate this question before the district court on two occasions—at evidentiary hearings in 1976 and in 1979 (see Pet. App. C2, C5). Evidence at the 1976 hearing on the government's motion for supplementary relief demonstrated that four schools designated for black students under SPISD's dual school system had been continuously attended solely by black students, and that several schools that were all-white under the dual system remained virtually all-white (566 F.2d at 1223). Although the district court denied the government's request for relief, the court of appeals in its 1978 opinion remanded the case to the district court for supplemental findings of fact as to "whether or not the SPISD is in fact a 'unitary' school system" (*id.* at 1225). The court of appeals noted that *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 26 (1971), placed the burden on the school district to show that the racial composition of one-race schools is not the result of present or past discriminatory action.

On remand, in 1979, the district court held another evidentiary hearing on the question of unitariness (Pet. App. C2). The evidence at that hearing demonstrated that ten of the eleven one-race schools then in the school system were historically one-race schools and had never been effectively desegregated (*id.* at D7). The district court nevertheless ruled that the 1970 plan had eliminated the vestiges of the dual school system and had achieved a unitary system (*id.* at C2). On appeal, however, in its 1981 opinion, the court of appeals overturned the finding of unitariness, holding that SPISD had failed to sustain its burden of demonstrating that the remaining one-race schools in the system were not the product of present or past discriminatory action on its part (*id.* at D5-D8).

SPISD thus has had two opportunities to demonstrate that present disparities in the school system are not the result of its discriminatory actions. It has twice failed to carry its burden of proof. On remand to the district court after the 1981 court of appeals decision, SPISD was not entitled to a third opportunity to litigate this question. See, *e.g., United States* v. *United States Smelting Refining & Mining Co.*, 339 U.S. 186, 198 (1950).

Accordingly, the court of appeals rejected petitioner's argument that the district court misapprehended its earlier mandate, and reaffirmed that that mandate was "to dismantle the existing dual school system at once" (Pet. App. A2). The district court thus acted properly in adopting and implementing a desegregation plan for the 1981-1982 school year without further inquiry into SPISD's liability.

3. The district court considered proposed desegregation plans submitted by SPISD, by the government, and by intervenors, and found constitutional infirmities in each of the proposals (Pet. App. B6-B10).[10] As the court of appeals noted (*id.* at A2), these findings were not challenged as clearly erroneous on appeal. In the absence of a satisfactory proposal by the parties, the district court had no alternative but to adopt a plan of its own in order to satisfy the mandate of the court of appeals "to dismantle the existing dual school system at once" (*ibid.*).

The district court, in fulfilling its duty under the court of appeals' mandate, correctly concluded that the resulting desegregation plan constitutes "a valid exercise of [its] broad equitable powers to remedy the present effects of the

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[10]There were other difficulties with the parties' submissions as well. For example, as the district court noted (Pet. App. B9), "one plan would have [had] some students attending seven different schools in seven years * * *."

prior discriminatory school system" (App. B, *infra*, 7a). The court of appeals affirmed the adoption of this desegregation plan, holding that the plan would dismantle the dual school system "in a way that is clearly constitutionally permissible" (Pet. App. A2). There is no reason for further review by this Court.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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AUGUST 1983

DOJ-1983-08

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

UNITED STATES OF AMERICA	*	
v.	*	
TEXAS EDUCATION AGENCY	*	CIVIL ACTION
(SOUTH PARK INDEPENDENT	*	NO. B-6819
SCHOOL DISTRICT)	*	

ORDER

On the 7th day of December, 1981, the Court heard evidence and arguments on the various motions filed subsequent to the Court's August 5, 1981, order. Having considered the evidence and arguments, it is ORDERED:

The MOTION of CAC FOR THE IMPOSITION OF *SINGLETON* GUIDELINES is GRANTED. In the event that the parties cannot agree on an appropriate order and present it to the Court on or before December 15, 1981, the Court shall enter an appropriate order of its own.

The MOTION of CAC FOR THE IMPOSITION OF A UNIFORM DISCIPLINARY CODE is GRANTED. In the event that the parties cannot agree on an appropriate order and present it to the Court on or before January 15, 1982, the Court shall enter an appropriate order of its own.

The MOTION of SPISD TO MODIFY THE AUGUST 5 ORDER TO PERMIT THE UTILIZATION OF FOUR MIDDLE SCHOOLS (including MacArthur) is DENIED. The present low occupancy rates of the West End K-3 schools is a natural, if unfortunate, by-product of the intentional overbuilding in the West End. If the school

board prefers to close one or more of the West End facilities, rather than to continue to operate them at low occupancy, the school board may so decide and so move to the Court, at any time after the school board members elected in April 1982 have taken office. At that time, the school board may also move to the Court to substitute other West End schools for the two West End feeder schools, and to revise the neighborhood boundaries accordingly.

South Park High School, MacArthur Middle School, and Bingman, Pietzsch, and Tyrrell Park Elementary Schools are hereby exempted from the compulsory transportation portions of this order, and shall continue to operate as neighborhood schools for their current neighborhoods. The attendance zones for these schools, and hence the schools themselves, are already naturally integrated. The Court finds no reason to subject these schools to further desegregation. To do so would impose an unnecessary remedy, exceeding the bounds of Federal judicial intervention that are justified by the Constitution, the Court's equity power, and the facts. In the event that the school board later desires to close these schools or alter their attendance zones, for reasons unrelated to the mandate governing this case, such as administrative or education considerations, the school board may so elect and so move to the Court at any time after the school board members elected in April 1983 have taken office.

The MOTION of SPISD TO ADOPT A ONE-HIGH SCHOOL PLAN in place of the two-high school feeder pattern plan contained in the August 5 order is GRANTED AS MODIFIED. The Court has given this particular motion careful consideration, and has concluded that the one-high school plan and the two-high school feeder pattern plan contained in the August 5 order are equally acceptable from a constitutional standpoint. The Court has therefore relied on equitable considerations in deciding to

approve a form of the one-high school plan. The most important equitable consideration was to ensure that the black students in the District would not bear a disproportionate share of the burden of desegregation under the one-high school plan. The Court has concluded that equitable distribution of that burden requires that the two campuses each house two grades, rather than that the West End campus house three grades. Therefore, all students who do not reside in the current South Park High School attendance zone shall attend the campus presently known as Hebert High School for grades nine and ten, and the campus presently known as Forest Park High School for grades eleven and twelve.

The Court is mindful of the school pride and traditions that have developed through the years at Hebert High School. Similar school pride and traditions have been developing at the more recently constructed Forest Park High School. Rather than prefer one school's pride and traditions over the other's, the Court will require that the two-campus high school be given an entirely new name, unrelated to the current name of either of the facilities. The new name shall be determined in a manner to be agreed upon by the student councils of Hebert and Forest Park, with the school board having final approval of the name selected. The Court is confident that the student councils can devise a procedure that will produce a suitable name for the school.

The majority-to-minority transfer provision of the 1970 order shall no longer apply to any of the schools in the South Park High School attendance zone, or to the Tyrrell Park Elementary School. The provision shall remain in effect for the neighborhood K-3 schools in the West End and Pear Orchard, subject to CAC's election to implement the black experimental K-3 program.

The MOTION of SPISD TO DEFER IMPLEMENTATION of the one-high school plan for two years is DENIED. The one-high school plan shall be implemented for the 1982-1983 school year.

The Bi-racial Committee shall be reduced from eight to six members, to consist of the three members chosen by CAC and the three members chosen by FOC. The Committee shall submit a proposal for future responsibilities of the Committee to the Court by February 1, 1982.

CAC shall formally notify the Court by March 1, 1982, whether it elects to implement the experimental black K-3 program.

The Court shall retain jurisdiction over this case for a period of three years or until further order of the Court.

ORDERED this 10th day of December, 1981.

/s/ Robert M. Parker

ROBERT M. PARKER
U. S. DISTRICT JUDGE

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

UNITED STATES OF AMERICA	*
v.	*
TEXAS EDUCATION AGENCY	* CIVIL ACTION
(SOUTH PARK INDEPENDENT	* NO. B-6819
SCHOOL DISTRICT)	*

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Pursuant to Federal Rule of Civil Procedure 52, the Court hereby enters the following Findings of Fact and Conclusions of Law, to supplement the Findings and Conclusions contained in the Memorandum Opinion and Order of August 5, 1981, and the Order of December 10, 1981.

FINDINGS OF FACT

1. The South Park Independent School District is geographically divided into three sections, each encompassing one high-school zone. The South Park High School Zone is racially mixed, the Hebert High School Zone is virtually all-black, and the Forest Park High School Zone is virtually all-white. Additionally, there is one relatively isolated elementary school zone, the Tyrrell Park Elementary School Zone, that is racially mixed.

2. The races are so geographically segregated that no plan can achieve a satisfactory racial mix in the school for any grade without substantial transportation of students.

3. The plans offered by the parties were inadequate or too disruptive.

4. The transportation required to implement the Court's plan for grades four through twelve strains the resources of S.P.I.S.D. The school district will be using the buses it presently owns at full capacity, and has limited resources and time in which to procure more buses.

5. Students transported away from their neighborhood schools will spend a significant amount of time in transit to and from school.

6. The disruptive impact of transportation away from one's neighborhood school would be particularly severe for children in the primary grades and their parents.

7. Parental and community involvement in neighborhood schools, which cross-town transportation of students would jeopardize, is particularly important educationally for children in the early grades.

8. Neither the school district, Citizen Action Committee, Freedom of Choice, nor any of the South Park Independent School District residents who wrote to the Court supported transporting children in grades K through three from their neighborhood schools.

9. The Court's plan will completely desegregate each grade in the feeder system and the high school grades. Therefore, under the Court's plan, although many children will attend racially identifiable schools for grades K through three, all children will attend desegregated schools for grades four through twelve.

10. None of the parties objected to deferring implementation of a desegregation plan in the high school grades for one year.

11. A complaint of many black parents is that they have insufficient input into the methods used to educate their children.

12. Remedial education programs and special curricula may be efficacious in remedying present effects of the prior discriminatory school system, when used in conjunction with other methods.

CONCLUSIONS OF LAW

1. The Court has jurisdiction over the subject matter of this action and over the parties. *United States v. Texas Education Agency (South Park Independent School District)*, 647 F.2d 504, 509 (5th Cir. 1981), *petition for cert. filed*, No. 81-540 (September 16, 1981).

2. Until a unitary school system is achieved, demographic changes since desegregation efforts began cannot justify continued racial imbalance in the schools. *Lee v. Macon County Board of Education*, 616 F.2d 805 (5th Cir. 1980).

3. S.P.I.S.D. still contains vestiges of a dual school system. The Plaintiff and Plaintiff-Intervenors are entitled to Judgment against the Defendant.

4. The Court's plan, if implemented as expected, should completely desegregate the South Park Independent School District, creating a unitary school system.

5. The Court's plan is a valid exercise of the Court's broad equitable powers to remedy the present effects of the prior discriminatory school system, in a manner calculated to minimize disruption. *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 15 (1971); *Milliken v. Bradley*, 433 U.S. 267, 280 n.15 (1977) (*Milliken II*).

6. It is constitutionally permissible for the Court to allow children in grades K through three to remain in neighborhood schools. *Stout v. Jefferson County Board of Education*, 537 F.2d 800 (5th Cir. 1976); *Carr v. Montgomery County Board of Education*, 377 F. Supp. 1123 (M.D. Ala.

1974), *aff'd*, 511 F.2d 1374 (5th Cir.), *cert. denied*, 423 U.S. 986 (1975). See *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 26, 31 (1971); *Lee v. Macon County Board of Education*, 616 F.2d 805, 812 (5th Cir. 1980).

7. It is constitutionally permissible for the Court to defer implementation of its plan in grades nine through twelve for one year.

8. It is constitutionally permissible for children living in racially mixed neighborhoods to remain in neighborhood schools. *Milliken v. Bradley*, 433 U.S. 267, 288 n.19 (1977) (*Milliken II*).

9. The black experimental K-3 program does not violate the Constitution. See *Milliken v. Bradley*, 433 U.S. 267, 280, 282 (1977) (*Milliken II*); *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 15 (1971); *Stout v. Jefferson County Board of Education*, 537 F.2d 800 (5th Cir. 1976).

10. The Court retains jurisdiction over this action until December 10, 1984, or until further order of the Court.

11. Costs are taxed against the Defendant.

12. Any Finding of Fact that is more appropriately a Conclusion of Law is so adopted, and any Conclusion of Law that is more appropriately a Finding of Fact is so adopted.

SIGNED and ENTERED this 15th day of December, 1981.

/s/ Robert M. Parker

ROBERT M. PARKER
UNITED STATES DISTRICT JUDGE